

February 4, 2019

**JONES
LEMON
GRAHAM** LLP

VIA ELECTRONIC MAIL ONLY

Kim Muratore
Case Developer (SFD-7-5)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: CERCLA Section 104(e) Information Request Letter
Orange County North Basin Study Area, Orange County, California
Our File No.: 405-52

Dear Ms. Muratore:

This letter and its attachments constitute Plymouth Tube Company's response to U.S. EPA's December 10, 2018, request for information concerning the Orange County North Basin ("OCNB") Study Area, located in Orange County, California. The letter was received by Plymouth Tube Company on December 21, 2018 and the original 30-day response period would have required a response on or before January 20, 2019. On behalf of Plymouth Tube Company, I requested additional time to respond. This request was granted via email correspondence from you, dated January 31, 2019.

The form of the enclosed response is directly adapted from the "Enclosure B: Information Request" of the §104(e) request. Each question is repeated, and Plymouth Tube Company's response follows. I have followed the guidance provided in Enclosure A, as provided in your December 10, 2018 letter.

Question No. 1:

State the full legal name, address, telephone number, email address, and position(s) held by any individual answering any of these questions on behalf of Plymouth Tube Company (the Company).

Response to Question No. 1:

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Question No. 2:

Provide the date and in which State the Company was incorporated, formed, or organized.

Response To Question No. 2:

Plymouth Tube Company (the Company) is a domestic corporation authorized by the State of Michigan. The Company's Articles of Association were filed by the Department of State, State of Michigan, on March 15, 1924.

Question No. 3:

Explain the Company's present corporate status (e.g., active, suspended, defunct, merged, dissolved) as well as its operational status (e.g., whether and where business operations are occurring).

Response to Question No. 3:

Plymouth Tube Company has been in continuous operation as a Michigan domestic corporation since 1924. It is an active Michigan corporation with its corporate headquarters located at 29W150 Warrenville Road, Warrenville, Illinois, 60555.

Plymouth Tube Company produces materials at facilities located in Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi and Wisconsin and sells products in 40 or more States and 15 or more foreign countries.

These are the current sites where business operations occurred from the time of the Company's acquisition of its first assets from Crucible Materials Corporation (all facilities owned at some point from 2005 forward, in addition to the corporate headquarters named above, where only offices are located):

1. Winamac, Indiana. There are three operations located on one campus. The Cold Draw facility started in 1961 and manufactures cold-drawn steel tubing. The Weld Mill building was added in 1973 but operations have changed and the facility now contains Winamac Specialty Products, a division of the Company. The third operation is the Hot Mill which was built in 1986 and manufactures seamless tube hollows.
2. Streator, Illinois. This is another cold draw steel tube manufacturing plant. It was opened by the Company in 1968.
3. West Monroe, Louisiana. This facility manufactures welded steel tubing and has operated since 1975.
4. Hopkinsville, Kentucky. This facility manufactures precision shaped parts made out of stainless steel and titanium. It was opened in 1976.
5. Salisbury, Maryland. This plant was opened in 1981 and manufactures smaller-diameter stainless steel tubing.
6. Eupora, Mississippi. This is a manufacturing plant producing welded steel tubing since 1985.
7. Kewanna, Indiana. This is a small maintenance and repair facility originally associated with the operations in nearby Winamac, Indiana. The facility was opened in the late 1980s.
8. East Troy, Wisconsin. Previously known as Trent Tube Plant No. 2. This was a cold-work manufacturing plant that produced cold drawn welded steel tubing. It was purchased from Crucible Materials Corporation in 2005 and sold to Wisconsin Oven in 2017.
9. East Troy, Wisconsin. Previously known as Trent Tube Plant No. 3. This is a tube manufacturing plant purchased from Crucible Materials Corporation and operated by Plymouth Tube Company since 2007.
10. Chicago, Illinois. This is a steel coil splitting operation purchased from Crucible Materials Corporation and operated by Plymouth Tube Company since 2007.

Question No. 4:

EPA's research indicates that the Company acquired the Trent Tube division of Crucible Materials Corporation in or about 2007. Describe all mergers, asset

purchases, stock purchases, or other transactions that occurred between the Company and Crucible Materials Corporation that relate to the sale or transfer of Trent Tube assets. Provide executed copies of all agreements, including exhibits, that evidence these transactions.

Response to Question No. 4:

Plymouth Tube Company did not acquire the Trent Tube Division of Crucible Materials Corporation, either in 2007 or at any other time. Plymouth Tube Company purchased several assets of the Trent Tube Division from Crucible Materials Corporation (Crucible) in two distinct transactions completed in 2005 and 2007.

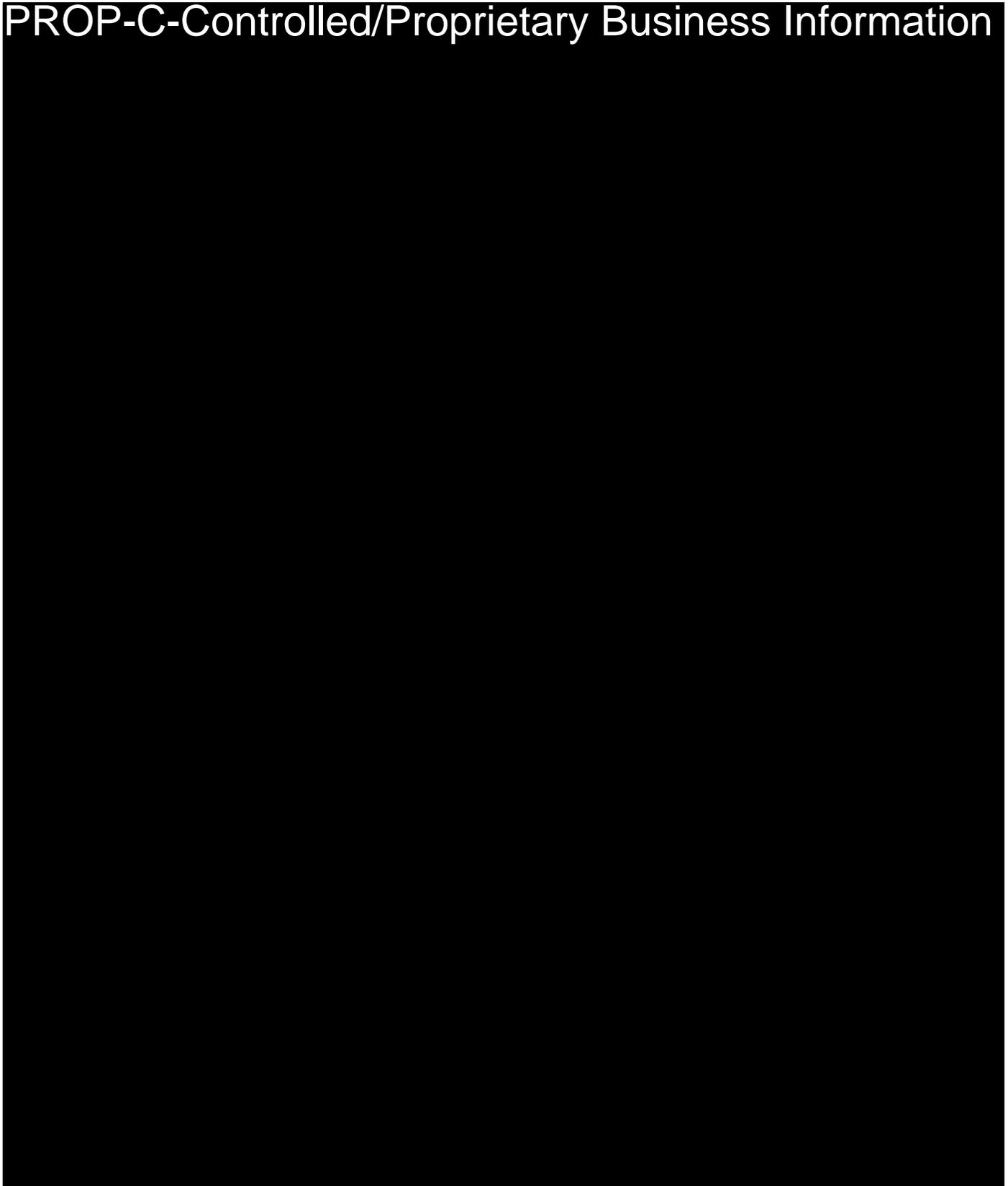
At the time of the asset purchases Crucible continued to own and operate other manufacturing facilities and properties, both as part of its Trent Tube Division and in other forms. To the best of the Company's knowledge those facilities within Crucible's Trent Tube Division were located in East Troy, Wisconsin (properties and assets never acquired by Plymouth Tube Company) and Carrollton, Georgia (also never acquired by Plymouth Tube Company). When Plymouth Tube Company purchased the first asset from Crucible in 2005, the Company acquired Trent Tube Plant No. 2 (referred to as the CWA Plant), leaving Crucible with ownership of Plants Nos. 1 and 3, also located in East Troy, Wisconsin, along with whatever other assets Crucible owned of the Trent Tube Division. In the 2007 transaction the Company purchased Trent Tube Plant No. 3 and the Chicago Processing Plant (at times it appears this facility may have been labelled Plant No. 5), leaving Crucible with ownership of Plant No. 1, No. 4 (presumably Carrollton, GA) and whatever other assets of the Trent Tube Division still owned by Crucible. To the best of the Company's knowledge, Crucible Materials Corporation was the sole owner of its Trent Tube Division. Crucible continued its business operations during and following the sale of those certain assets to the Company in 2005 and 2007.

2005 Transaction

On February 28, 2005 Crucible and the Company executed the "Asset Purchase Agreement by and between Crucible Materials Corporation and Plymouth Tube Company, Dated as of February 28, 2005" (referred to herein as 2005 APA).

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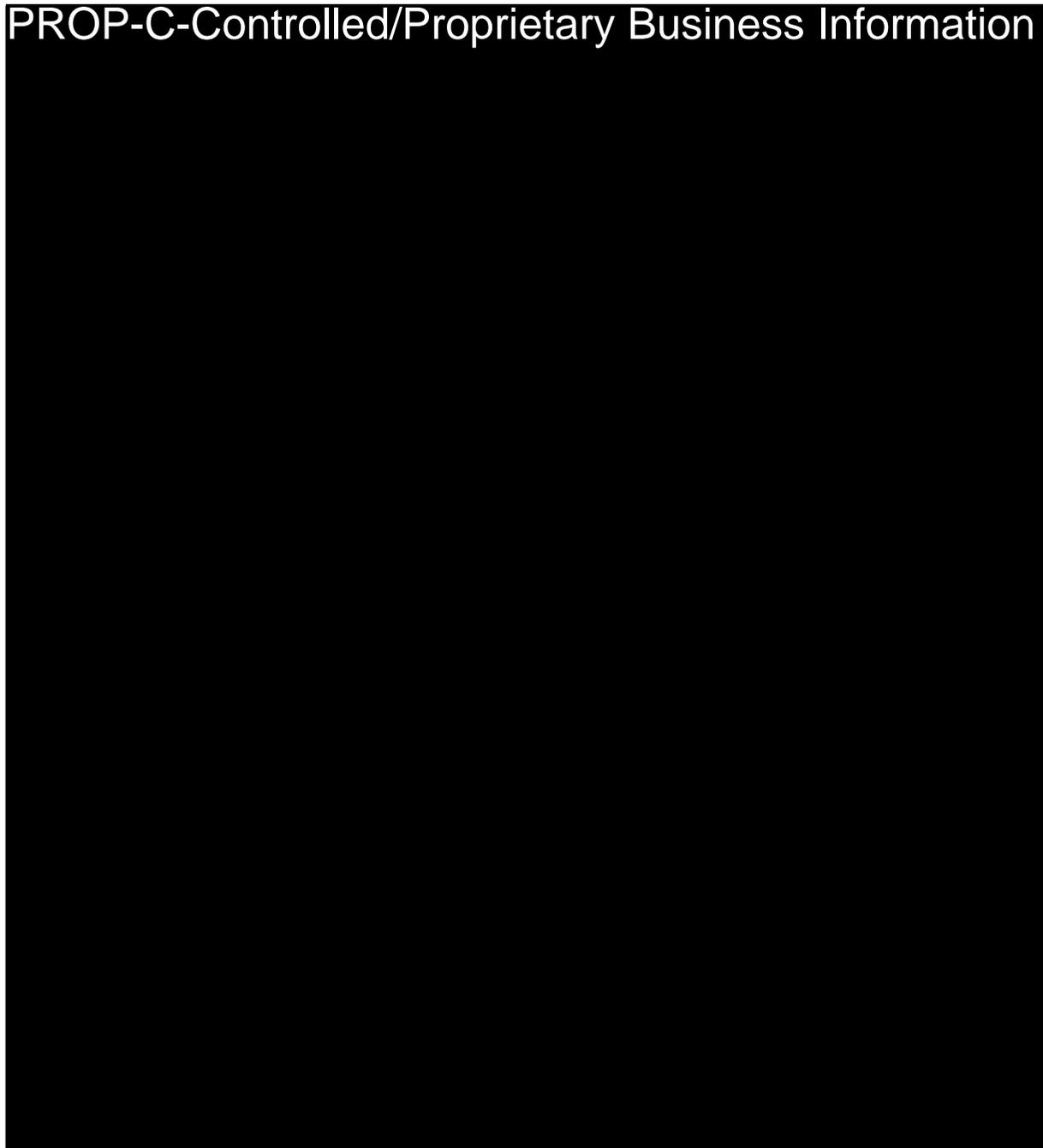
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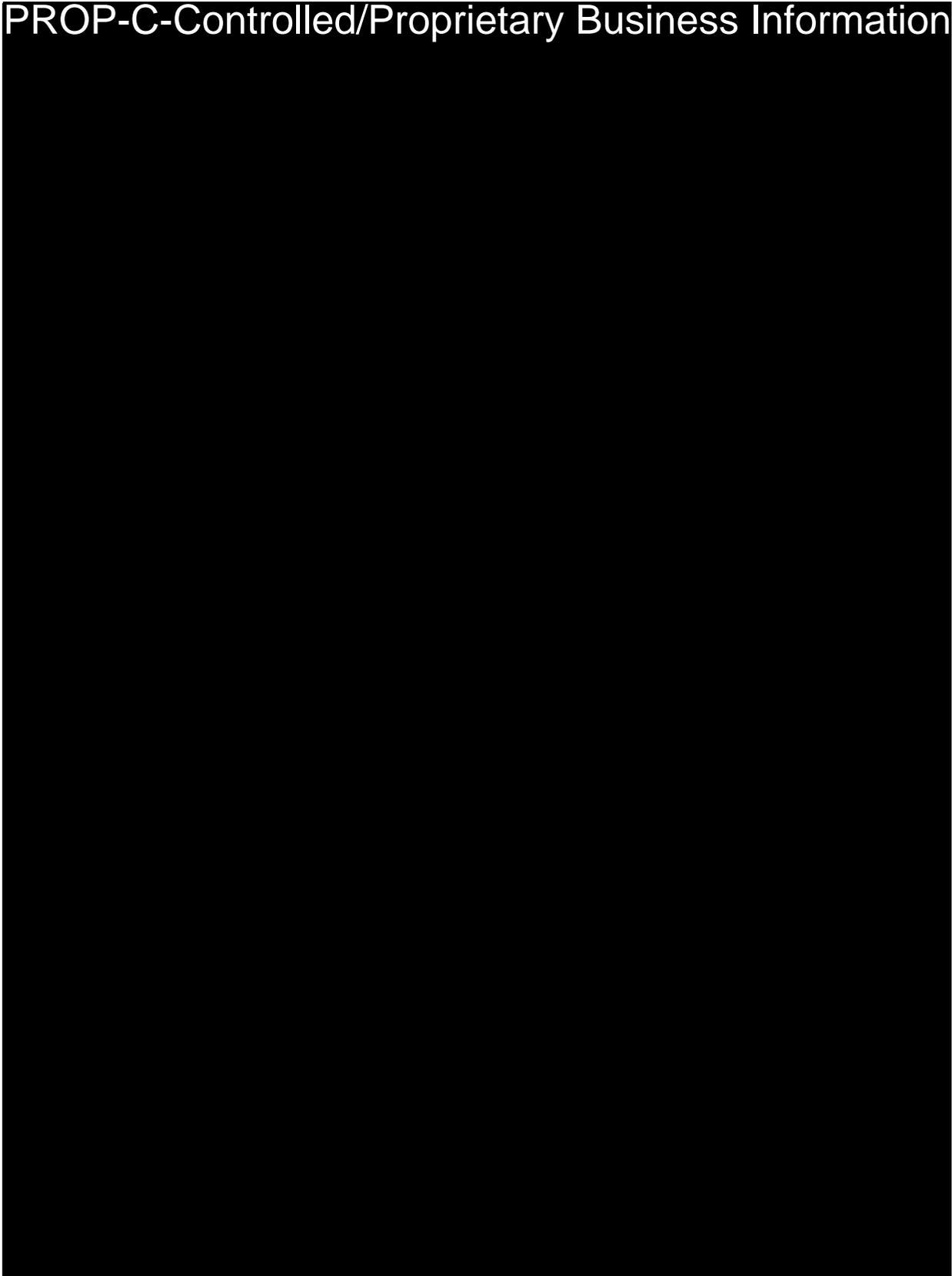
2007 Transaction

Two years after the 2005 APA the same parties executed a document titled "Asset Purchase Agreement by and between Crucible Materials Corporation and Plymouth Tube Company, Dated as of July 25, 2007" (referred to herein as 2007 APA). The 2007 APA provided for the sale by Crucible to Plymouth Tube Company of the other operating Trent Tube plant in East Troy, Wisconsin and Crucible's Chicago Trent Processing plant, located at 4555 West Armitage Road, Chicago, Illinois.

PROP-C-Controlled/Proprietary Business Information



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Question No. 5:

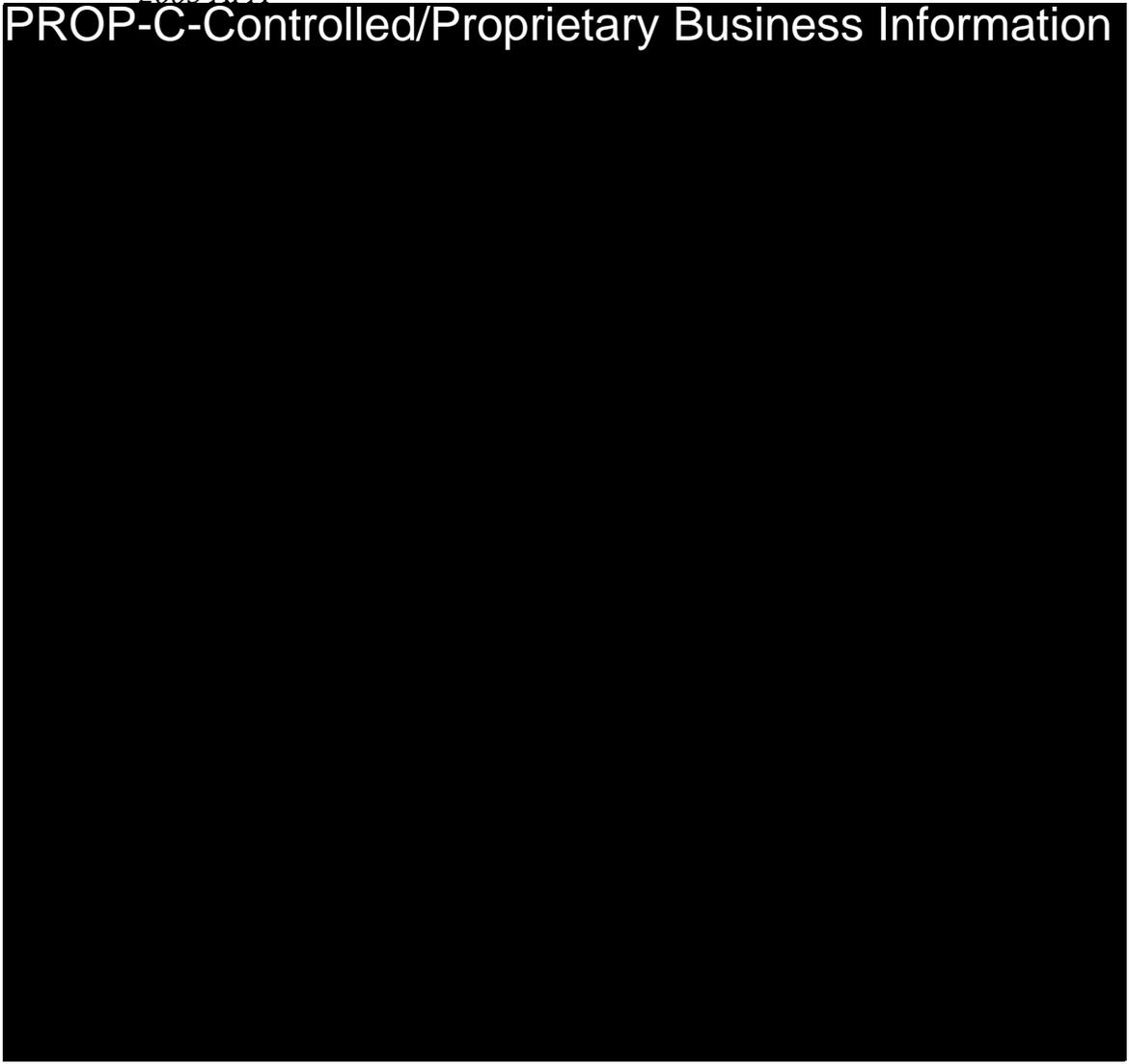
State whether the Company assumed any liabilities related to Crucible Materials Corporation's assets or operations and/or the Trent Tube division as part of the 2007 acquisition. If so, provide copies of all documentation that evidences the transfer and assumption of those liabilities by the Company.

Response to Question No. 5:

In both the 2005 and 2007 Transactions there were no liabilities transferred except those specifically named and detailed in the respective asset purchase agreements, being the 2005 APA and the 2007 APA. These are described below and may be read in full in the documents provided.

2005 APA

PROP-C-Controlled/Proprietary Business Information



PROP-C-Controlled/Proprietary Business Information



2007 APA

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Provided Documents

This letter and the included documents are being submitted in electronic form, only, per the request made in your letter, dated December 10, 2018.

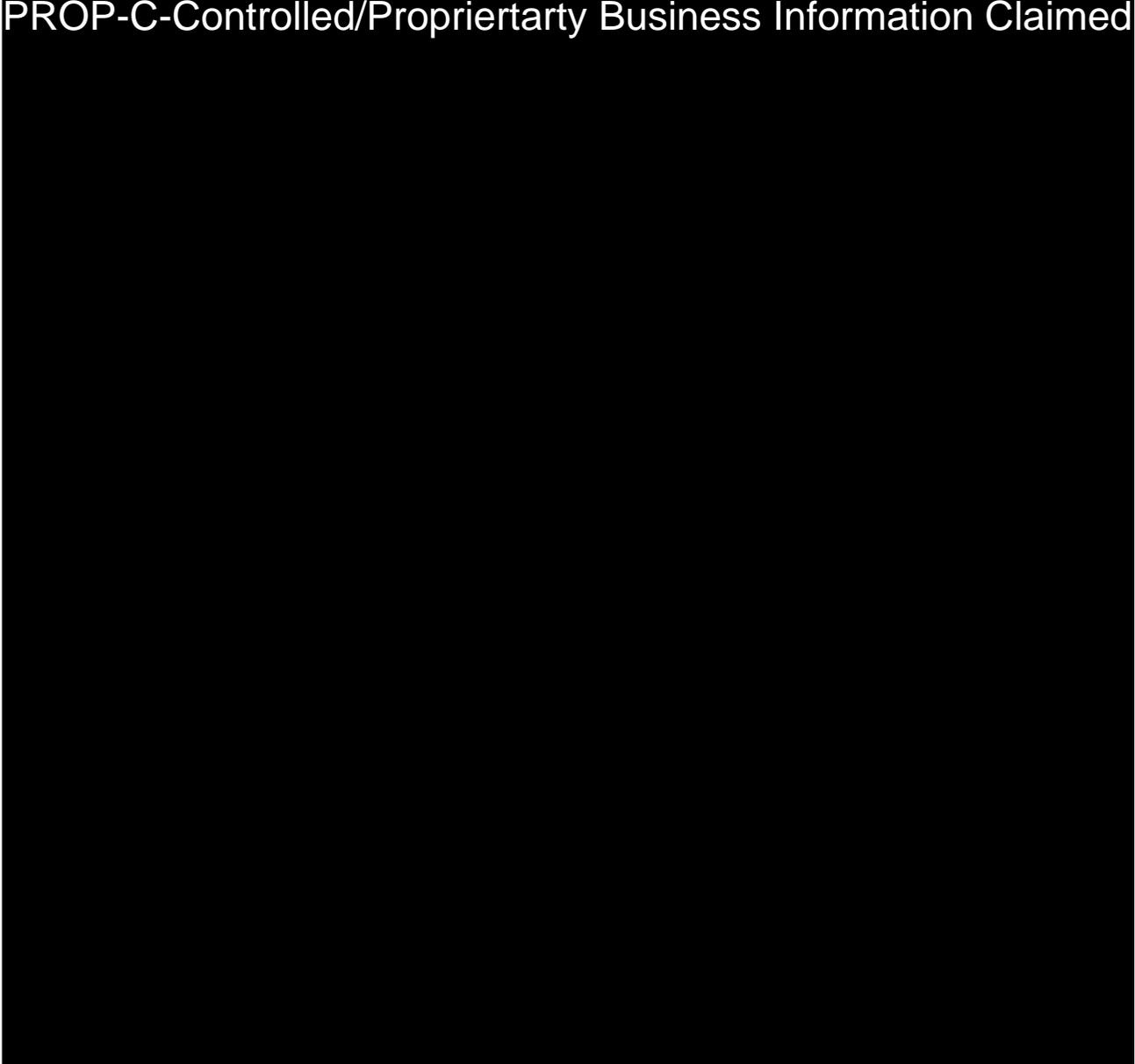
Confidential Information

Plymouth Tube Company asserts a claim of confidentiality for and covering all of the documents provided pursuant to this Response to the December 10, 2018 CERCLA Section 104(e) Information Request Letter, pursuant to terms established in Section 104(e)(7), as follows:

PROP-C-Controlled/Proprietary Business Information Claimed



PROP-C-Controlled/Proprietary Business Information Claimed



Summary

In accordance with your instructions, Plymouth Tube Company answered, to the best of its ability, the questions included in the §104(e) request.

From the questions asked in the Information Request it appears U.S EPA is attempting to determine whether Plymouth Tube Company is subject to successor liability under CERCLA. The answer clearly is that the Company is not liable for any CERCLA obligations which may otherwise have been those of Crucible. Plymouth Tube Company completed two asset purchase agreements with Crucible Materials Corporation, assuming very limited liabilities and

leaving Crucible with a continuing business, making no changes to the corporate management of Crucible. Please consider these facts:

1. After both transactions Crucible continued to operate. Crucible sold off certain of the assets of one of its business divisions – a division wholly-owned by Crucible – and Crucible retained the vast majority of that company’s assets and liabilities.
2. Following each asset purchase, Plymouth Tube Company removed Trent Tube and Crucible indicia on the real estate, in advertising and sales, and in representation of ownership and operation of the business.
3. Following each asset purchase, Plymouth Tube Company made significant changes to the physical plants, the types of products produced and sold, the manufacturing processes, the operating and environmental permitting required, and many other aspects of business operations.
4. Crucible continued operating from its headquarters in Syracuse, New York.
5. Many salaried management personnel in East Troy, WI were not hired by Plymouth Tube Company following the asset purchase agreement.
6. There was no identity of shareholders between Crucible and Plymouth Tube Company, whether before or after the two transactions (2005 and 2007). Crucible maintained its own identity and business control following the two transactions.
7. Crucible specifically retained environmental liabilities, along with most other liabilities and the majority of Crucible’s assets.
8. Crucible obtained no rights to manage Plymouth Tube Company’s business and retained no rights in the assets sold to Plymouth Tube Company.
9. Plymouth Tube Company assumed no obligations or rights to allow it to operate the Crucible business and never held itself out as a continuation of Crucible, because Crucible continued to operate its own business following to 2005 and 2007 transactions.
10. The 2005 and 2007 asset sales were arms-length transactions between two unrelated companies, Crucible Materials Corporation and Plymouth Tube Company. The two companies shared no business relationship and no common officers, directors or shareholders, either before or after the transactions. The consideration was adequate for the assets sold, reflecting no discounts or bonuses for items or conditions not disclosed and not included in the transactions.

These two transactions, individually or collectively, did not result in a de facto merger of Crucible and Plymouth Tube Company, as such is described by the holding in *In Re Acushnet River & New Bedford Harbor Proceedings*, 712 F.Supp. 1010, 1015 (D. Mass. 1989) or *Louisiana-Pacific Corp. v. Asarco, Inc.*,

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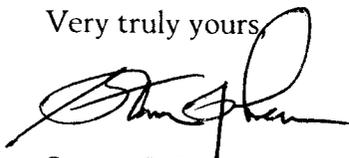
909 F.2d 1260 (9th Cir. 1990) or any number of following cases. There is no possible claim for “mere continuation” as the business retained separate identities, including officers, shareholders, directors and corporate headquarters. Even under the “Continuity of Enterprise Doctrine” (a concept dismissed by the Ninth Circuit in *Louisiana-Pacific Corp.*, 909 F.2d 1260) these transactions would not lead to CERCLA liability for the Company because that “doctrine” would show (a) Plymouth Tube Company did not simply continue Crucible’s business without interruption and (b) Plymouth Tube Company and Crucible engaged in their own distinct business activities.

Objections and Reservations

This response is submitted subject to all reservations and objections available pursuant to the Federal Rules of Civil Procedure (Federal Rules) governing, discovery, including, but not limited to scope, relevancy, and privilege. Specifically, Plymouth Tube Company objects to Enclosure A: Instructions and Definitions, Instruction No. 6, concerning a requirement to supplement this response. Plymouth Tube Company objects to this imposition, to the extent it requires more than what is required under the Federal Rules.

Nothing in this response should be, or is intended to be, construed either as an admission of guilt or wrongdoing, or as an acceptance of liability for damages or costs incurred at the Orange County North Basin Study Area, whether in the past, present, or future. Plymouth Tube Company does not waive its right to exert claims of privilege over enclosed documents, regardless of any opinion offered by U.S EPA in response to the claims of confidentiality offered above.

Very truly yours,



Steven J. Lemon

SJL:cp

Electronic Enclosures (Marked “Confidential”)

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